

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DARYL FULLER,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)

No. 48A02-0606-CR-507

APPEAL FROM THE MADISON SUPERIOR COURT

The Honorable Thomas Newman, Jr., Judge

Cause Nos. 48D03-0310-FD-425, 48D03-0003-DF-72 and 48D03-0012-DF-394

February 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Daryl Fuller appeals from the trial court's revocation of his probation. Fuller presents two issues for review:

1. Whether the State presented sufficient evidence to sustain the revocation of his probation.
2. Whether the trial court abused its discretion when it ordered his incarceration.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 30, 2006, the State filed a Notice of Violation of Suspended Sentence alleging that Fuller had battered Darlene Williams. The trial court held a hearing and determined that Fuller had violated the terms of his probation by committing Battery, as a Class A misdemeanor. The court revoked Fuller's probation and ordered that his suspended sentence be served at the Indiana Department of Correction. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sufficiency of the Evidence

Fuller contends that the State presented insufficient evidence to support the revocation of his probation. Specifically, he maintains that the State failed to prove that he was the person who battered Williams. We cannot agree.

The decision whether to revoke probation is a matter within the sound discretion of the trial court. Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). A probation revocation hearing is civil in nature, and the State need only prove the alleged

violations by a preponderance of the evidence. Id. (citations omitted). “Generally, ‘violation of a single condition of probation is sufficient to revoke probation.’” Id. at 860-61 (quoting Pittman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), trans. denied). On review, our court considers only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of witnesses. Id. at 861 (citations omitted). If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id.

The evidence most favorable to the judgment demonstrates that Fuller battered Williams. Specifically, Officer Christopher Hoyle of the Anderson Police Department testified that he interviewed Williams shortly after the incident, and she told him that Fuller had attacked her. Additionally, Fuller’s neighbor Ricky Townsend witnessed Fuller grab Williams and slam her on the hood of a car before commencing to choke her. Thus, Townsend corroborated Officer Hoyle’s testimony. Given that Townsend identified Fuller as the attacker and Williams initially reported Fuller as the attacker upon Officer Hoyle’s arrival, the State has presented sufficient evidence to revoke Fuller’s probation. While Williams recanted her story at the probation revocation hearing, the credibility of Williams and Fuller was for the trier of fact to determine. Fuller’s insufficiency claim is essentially asking this court to reweigh the evidence and assess the credibility of the witnesses, which we will not do. Jones, 783 N.E.2d at 1139. The State presented sufficient evidence to support the revocation of Fuller’s probation.

Issue Two: Abuse of Discretion

Fuller next contends that the trial court abused its discretion when it ordered his incarceration. Specifically, Fuller maintains that he has a medical condition that warrants an alternative sentence. We review a trial court's decision to revoke probation under an abuse of discretion standard. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005), trans. denied. We will find an abuse of discretion when the trial court's decision is against the logic and effect of the facts. Weis v. State, 825 N.E.2d 896, 900 (Ind. Ct. App. 2005). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." Jones, 838 N.E.2d at 1148.

Fuller violated a condition of his probation by committing a Class A misdemeanor. At the violation hearing, Fuller produced no evidence of his alleged medical condition other than his own testimony. In addition, Fuller has not shown that the Department of Correction would not be able to accommodate his medical needs. An error involving an abuse of discretion does not demand reversal unless it affects the substantial rights of the party or is inconsistent with the concept of substantial justice. Ross v. State, 835 N.E.2d 1090, 1092 (Ind. Ct. App. 2005). We cannot say that the trial court abused its discretion when it ordered Fuller's incarceration.

Affirmed.

MAY, J., and MATHIAS, J., concur.